

AMENDED IN ASSEMBLY MAY 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1527**

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**Introduced by Assembly Member Arambula**

February 23, 2007

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~~An act to add Sections 17052.15 and 23615 to, and to add and repeal Sections 17052.13, 17052.14, 23613, and 23614 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~  
*An act to add and repeal Sections 17052.14 and 23614 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1527, as amended, Arambula. Income and corporation taxes: credits: *California* Cleantech Advantage Act of 2008.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2008, and before January 1, 2013, in an amount equal to 8% of the amount paid or incurred by a qualified taxpayer for qualified costs, as defined, related to cleantech manufacturing activities. This bill would also authorize a credit against those taxes for each taxable year beginning on or after January 1, 2008, and before January 1, 2013, in an amount equal to 20% of the net tax expenses the qualified amount, as defined, paid or incurred by a qualified taxpayer for qualified research in California, as defined, related to cleantech industries. *This bill would allow up to 50% of unused credits allowed to a qualified taxpayer to be sold to, and used by, a qualified buyer, as defined.*

*This bill would require specified information to be filed under penalty of perjury, thus imposing a state-mandated local program by expanding the scope of an existing crime.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~This bill would allow up to 50% of unused credits allowed to a qualified seller to be sold or traded to, and be used by, a qualified buyer, as defined.~~

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 California Cleantech Advantage Act of 2008.

3 SEC. 2. (a) The Legislature finds and declares:

4 (1) That the enactment of Assembly Bill 32 (Chapter 488,  
5 Statutes of 2006) made California a national and global policy  
6 leader in the effort to reduce greenhouse gases that pose serious  
7 threats to our natural environment and to our residents' health and  
8 safety.

9 (2) That the prospect of global warming is very real and may  
10 already be impacting our climate and ecosystems.

11 (3) That there is an urgent need to develop, market, and use  
12 products, equipment, and services that reduce the formation of  
13 greenhouse gases.

14 (b) The Legislature further finds and declares:

15 (1) That the level of national and global concern over greenhouse  
16 gas emissions has begun to focus American technological research  
17 and investment on developing industrial and consumer products  
18 and processes that produce zero or ultra-low emissions of carbon  
19 dioxide, the primary greenhouse gas.

20 (2) Nationally, in 2006, as much as \$63 billion was invested in  
21 clean technologies, also called "cleantech."

1 (3) California received only 31 percent of venture capital  
2 invested nationally in cleantech, as compared to 63 percent of the  
3 nation’s venture capital invested in the computer industry.

4 (c) The Legislature further finds and declares:

5 (1) It is in the best interest of this state to expeditiously foster  
6 a competitive cleantech industry in California by offering investors  
7 financial incentives to spur cleantech research and development,  
8 production, and utilization of environmentally clean products.

9 (2) That growing cleantech investment will help create as many  
10 as 114,000 new, high-paying, skilled jobs, improve the state’s air  
11 and water quality, and offer business reliable and affordable sources  
12 of alternative energy.

13 (d) Therefore, it is the intent of the Legislature to enact and  
14 enhance targeted tax credits to increase investment in cleantech  
15 activities and the production of environmentally clean  
16 manufacturing equipment, as well as maintain and enhance this  
17 state’s competitive lead in attracting investment capital, clean  
18 industry, and high-paying, skilled jobs.

19 ~~SEC. 3. Section 17052.13 is added to the Revenue and Taxation~~  
20 ~~Code, to read:~~

21 ~~17052.13. (a) For each taxable year beginning on or after~~  
22 ~~January 1, 2008, and before January 1, 2013, there shall be allowed~~  
23 ~~to a qualified taxpayer as a credit against the “net tax,” as defined~~  
24 ~~in Section 17039, an amount equal to 8 percent of the qualified~~  
25 ~~costs on or after January 1, 2008, for qualified cleantech property~~  
26 ~~that is placed in service in this state.~~

27 ~~(b) For purposes of this section:~~

28 ~~(1) “Fabricating” means to make, build, create, produce, or~~  
29 ~~assemble components or property to work in a new or different~~  
30 ~~manner.~~

31 ~~(2) “Manufacturing” means the activity of converting or~~  
32 ~~conditioning property by changing the form, composition, quality,~~  
33 ~~or character of the property for ultimate sale at retail or use in the~~  
34 ~~manufacturing of a product to be ultimately sold at retail.~~  
35 ~~Manufacturing includes any improvements to tangible personal~~  
36 ~~property that result in a greater service life or greater functionality~~  
37 ~~than that of the original property.~~

38 ~~(3) “Processing” means the physical application of the materials~~  
39 ~~and labor necessary to modify or change the characteristics of~~  
40 ~~property.~~

- 1     ~~(4) (A) “Tangible personal property” means all of the following:~~
- 2         ~~(i) Tangible personal property purchased for use by a qualified~~
- 3 ~~taxpayer to be used primarily in any stage of the manufacturing,~~
- 4 ~~processing, refining, fabricating, or recycling of property,~~
- 5 ~~beginning at the point any raw materials are received by the~~
- 6 ~~qualified person and introduced into the process and ending at the~~
- 7 ~~point at which the manufacturing, processing, refining, fabricating,~~
- 8 ~~or recycling has altered property to its completed form, including~~
- 9 ~~packaging, if required.~~
- 10         ~~(ii) Tangible personal property purchased for use by a qualified~~
- 11 ~~taxpayer to be used primarily in research and development.~~
- 12         ~~(iii) Tangible personal property purchased for use by a qualified~~
- 13 ~~taxpayer to be used primarily to maintain, repair, measure, or test~~
- 14 ~~any property described in paragraph (1) or (2).~~
- 15         ~~(iv) Tangible personal property purchased for use by a contractor~~
- 16 ~~purchasing that property either as an agent of a qualified taxpayer~~
- 17 ~~or for the contractor’s own account and subsequent resale to a~~
- 18 ~~qualified person for use in the performance of a construction~~
- 19 ~~contract for the qualified taxpayer who will use the tangible~~
- 20 ~~personal property as an integral part of the manufacturing,~~
- 21 ~~processing, refining, fabricating, or recycling process, or as a~~
- 22 ~~research or storage facility for use in connection with the~~
- 23 ~~manufacturing process.~~
- 24     ~~(B) “Property” does not include any property that is leased by~~
- 25 ~~a qualified person to another person.~~
- 26     ~~(5) “Qualified cleantech property” means any tangible personal~~
- 27 ~~property that uses technology to compete favorably on price and~~
- 28 ~~performance while reducing pollution, waste, and use of natural~~
- 29 ~~resources and that focuses on the environmental impact of human~~
- 30 ~~activities. “Qualified cleantech property” includes, but is not~~
- 31 ~~limited to, tangible personal property that uses wind, solar,~~
- 32 ~~biomass, and hydrogen technologies that result in cleaner air and~~
- 33 ~~water, encourage the reuse of materials, and result in reductions~~
- 34 ~~of greenhouse gas emissions.~~
- 35     ~~(6) “Qualified costs” means the amount paid or incurred by a~~
- 36 ~~qualified taxpayer for acquiring and installing qualified cleantech~~
- 37 ~~property that is placed in service in this state.~~
- 38     ~~(7) “Qualified taxpayer” means a small business, as defined in~~
- 39 ~~Section 14837 of the Government Code, that has a gross income~~

1 of less than ten million dollars (\$10,000,000) that is earned in  
2 California.

3 (8) “Refining” means the process of converting a natural  
4 resource to an intermediate or finished product.

5 (9) “Tangible personal property” does not include consumables  
6 with a normal useful life of less than one year, except as provided  
7 in subparagraph (E) of paragraph (10), and does not include  
8 furniture, inventory, equipment used in the extraction process, or  
9 equipment used to store finished products that have completed the  
10 manufacturing process.

11 (10) “Tangible personal property” includes, but is not limited  
12 to, all of the following:

13 (A) Machinery and equipment, including component parts and  
14 contrivances such as belts, shafts, moving parts, and operating  
15 structures.

16 (B) All equipment or devices used or required to operate,  
17 control, regulate, or maintain the machinery, including, without  
18 limitation, computers, data processing equipment, and computer  
19 software, together with all repair and replacement parts with a  
20 useful life of one or more years therefor, whether purchased  
21 separately or in conjunction with a complete machine and  
22 regardless of whether the machine or component parts are  
23 assembled by the taxpayer or another party.

24 (C) Property used in pollution control that meets or exceed  
25 standards established by the State Air Resources Board of the  
26 Water Resources Control Board.

27 (D) Special purpose buildings and foundations used as an  
28 integral part of the manufacturing, processing, refining, or  
29 fabricating process, or that constitute a research or storage facility  
30 used during the manufacturing process. Buildings used solely for  
31 warehousing purposes after completion of the manufacturing  
32 process are not included.

33 (E) Fuels used or consumed in the manufacturing process.

34 (F) Property used in recycling.

35 (e) No credit, no further credit in any subsequent year, and no  
36 credit carryover shall be allowed with respect to the qualified  
37 cleantech property to any qualified taxpayer beginning in the year  
38 in which that qualified cleantech property for which a credit was  
39 allowed under this section is disposed of or removed from this  
40 state within one year of the date of purchase.

1 ~~(d) In the case where the credit allowed by this section exceeds~~  
2 ~~the “net tax,” the excess may be carried over to reduce the “net~~  
3 ~~tax” in the following year, and the succeeding eight years, until~~  
4 ~~the credit is exhausted.~~

5 ~~(e) This section shall remain in effect only until January 1, 2013,~~  
6 ~~and as of that date is repealed, unless a later enacted statute, which~~  
7 ~~is enacted before January 1, 2013, deletes or extends that date.~~  
8 ~~However, any unused credit may continue to be carried forward,~~  
9 ~~as provided in subdivision (d), until the credit is exhausted.~~

10 ~~SEC. 4. Section 17052.14 is added to the Revenue and Taxation~~  
11 ~~Code, to read:~~

12 ~~17052.14.—(a) For each taxable year beginning on or after~~  
13 ~~January 1, 2008, and before January 1, 2013, there shall be allowed~~  
14 ~~as a credit against the “net tax,” as defined by Section 17039, to~~  
15 ~~a taxpayer an amount determined in accordance with Section 41~~  
16 ~~of the Internal Revenue Code for qualified research conducted in~~  
17 ~~this state.~~

18 ~~(b) For purposes of this section:~~

19 ~~(1) “Qualified research” means research that is dedicated to the~~  
20 ~~development of cleantech technologies, including those that use~~  
21 ~~technology to compete favorably on price and performance while~~  
22 ~~reducing pollution, waste, and use of natural resources and that~~  
23 ~~focuses on the environmental impact of human activities.~~  
24 ~~“Qualified research” includes, but is not limited to, research into~~  
25 ~~cleantech technology that uses wind, solar, biomass, and hydrogen~~  
26 ~~technologies that result in cleaner air and water, encourage the~~  
27 ~~reuse of materials, and result in reductions of greenhouse gas~~  
28 ~~emissions.~~

29 ~~(2) The reference to “Section 501(a)” in Section 41(b)(3)(C) of~~  
30 ~~the Internal Revenue Code, relating to contract research expenses,~~  
31 ~~is modified to read “this part of Part 11 (commencing with Section~~  
32 ~~23001).”~~

33 ~~(e) (1) The provisions of Section 41(e)(4) of the Internal~~  
34 ~~Revenue Code relating to the election to use an alternate~~  
35 ~~incremental credit apply, except that the reference to the~~  
36 ~~“Secretary” in Section 41(e)(4)(B) of the Internal Revenue Code~~  
37 ~~shall be modified to, instead, refer to the “Franchise Tax Board.”~~

38 ~~(2) Section 41(e)(6) of the Internal Revenue Code, relating to~~  
39 ~~gross receipts, is modified to take into account only those gross~~  
40 ~~receipts from the sale of property held primarily for sale to~~

1 customers in the ordinary course of the taxpayer's trade or business  
2 that is delivered or shipped to a purchaser within this state,  
3 regardless of freight on board (f.o.b.) point or any other condition  
4 of the sale.

5 ~~(d) Section 41(h) of the Internal Revenue Code, relating to~~  
6 ~~termination, shall not apply.~~

7 ~~(e) Section 41(g) of the Internal Revenue Code, relating to~~  
8 ~~special rule for passthrough of credit, is modified by each of the~~  
9 ~~following:~~

10 ~~(1) The last sentence shall not apply.~~

11 ~~(2) If the amount determined under Section 41(a) of the Internal~~  
12 ~~Revenue Code for any taxable year exceeds the limitation of~~  
13 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~  
14 ~~carried over to other taxable years under the rules of subdivision~~  
15 ~~(g) except that the limitation of Section 41(g) of the Internal~~  
16 ~~Revenue Code shall be taken into account in each subsequent~~  
17 ~~taxable year.~~

18 ~~(f) Any deduction otherwise allowed under this part for any~~  
19 ~~amount paid or incurred by the taxpayer upon which the credit is~~  
20 ~~based shall be reduced by the amount of the credit allowed by this~~  
21 ~~section.~~

22 ~~(g) In the case where the credit allowed under this section~~  
23 ~~exceeds the "net tax," the excess may be carried over to reduce~~  
24 ~~the "net tax" in the following year, and the succeeding eight years~~  
25 ~~if necessary, until the credit has been exhausted.~~

26 ~~(h) This section shall remain in effect only until January 1, 2013,~~  
27 ~~and as of that date, is repealed. However, any unused credit may~~  
28 ~~be carried over and used after that repeal date in accordance with~~  
29 ~~subdivision (g).~~

30 ~~SEC. 5. Section 17052.15 is added to the Revenue and Taxation~~  
31 ~~Code, to read:~~

32 ~~17052.15. (a) Notwithstanding any provision of law to the~~  
33 ~~contrary, and except as otherwise provided in this section, up to~~  
34 ~~50 percent of any unused qualified tax credit allowed to a qualified~~  
35 ~~buyer may be sold or traded to, and used by, a qualified buyer.~~

36 ~~(b) For purposes of this section:~~

37 ~~(1) "Qualified buyer" means any company that employs workers~~  
38 ~~in this state.~~

39 ~~(2) "Qualified seller" means a taxpayer that was allowed tax~~  
40 ~~credits under Section 17052.13 or 17052.14.~~

1     ~~(3) “Qualified tax credit” means a tax credit allowed to a~~  
2 ~~taxpayer under Section 17052.13 or 17052.14.~~

3     ~~(e) Unused tax credits may be sold or traded by a qualified seller~~  
4 ~~during any taxable year beginning on or after January 1, 2008, but~~  
5 ~~may be used by a qualified buyer only for taxable years beginning~~  
6 ~~on or after January 1, 2009.~~

7     ~~(d) A qualified seller and qualified buyer shall apply to the~~  
8 ~~Franchise Tax Board, in the form and manner determined by the~~  
9 ~~board, for the purchase and sale of, or the trade of, any unused~~  
10 ~~qualified tax credit under this section.~~

11     ~~SEC. 6. Section 23613 is added to the Revenue and Taxation~~  
12 ~~Code, to read:~~

13     ~~23613. (a) For each taxable year beginning on or after January~~  
14 ~~1, 2008, and before January 1, 2013, there shall be allowed to a~~  
15 ~~qualified taxpayer as a credit against the “tax,” as defined in~~  
16 ~~Section 23036, an amount equal to 8 percent of the qualified costs~~  
17 ~~on or after January 1, 2008, for qualified cleantech property that~~  
18 ~~is placed in service in this state.~~

19     ~~(b) For purposes of this section:~~

20     ~~(1) “Fabricating” means to make, build, create, produce, or~~  
21 ~~assemble components or property to work in a new or different~~  
22 ~~manner.~~

23     ~~(2) “Manufacturing” means the activity of converting or~~  
24 ~~conditioning property by changing the form, composition, quality,~~  
25 ~~or character of the property for ultimate sale at retail or use in the~~  
26 ~~manufacturing of a product to be ultimately sold at retail.~~  
27 ~~Manufacturing includes any improvements to tangible personal~~  
28 ~~property that result in a greater service life or greater functionality~~  
29 ~~than that of the original property.~~

30     ~~(3) “Processing” means the physical application of the materials~~  
31 ~~and labor necessary to modify or change the characteristics of~~  
32 ~~property.~~

33     ~~(4) (A) “Tangible personal property” means all of the following:~~

34     ~~(i) Tangible personal property purchased for use by a qualified~~  
35 ~~taxpayer to be used primarily in any stage of the manufacturing,~~  
36 ~~processing, refining, fabricating, or recycling of property,~~  
37 ~~beginning at the point any raw materials are received by the~~  
38 ~~qualified person and introduced into the process and ending at the~~  
39 ~~point at which the manufacturing, processing, refining, fabricating,~~

1 or recycling has altered property to its completed form, including  
2 packaging, if required.

3 (ii) ~~Tangible personal property purchased for use by a qualified  
4 taxpayer to be used primarily in research and development.~~

5 (iii) ~~Tangible personal property purchased for use by a qualified  
6 taxpayer to be used primarily to maintain, repair, measure, or test  
7 any property described in paragraph (1) or (2).~~

8 (iv) ~~Tangible personal property purchased for use by a contractor  
9 purchasing that property either as an agent of a qualified taxpayer  
10 or for the contractor's own account and subsequent resale to a  
11 qualified person for use in the performance of a construction  
12 contract for the qualified taxpayer who will use the tangible  
13 personal property as an integral part of the manufacturing,  
14 processing, refining, fabricating, or recycling process, or as a  
15 research or storage facility for use in connection with the  
16 manufacturing process.~~

17 (B) ~~"Property" does not include any property that is leased by  
18 a qualified person to another person.~~

19 (5) ~~"Qualified cleantech property" means any tangible personal  
20 property that uses technology to compete favorably on price and  
21 performance while reducing pollution, waste, and use of natural  
22 resources and that focuses on the environmental impact of human  
23 activities. "Qualified cleantech property" includes, but is not  
24 limited to, tangible personal property that uses wind, solar,  
25 biomass, and hydrogen technologies that result in cleaner air and  
26 water, encourage the reuse of materials, and result in reductions  
27 of greenhouse gas emissions.~~

28 (6) ~~"Qualified costs" means the amount paid or incurred by a  
29 qualified taxpayer for acquiring and installing qualified cleantech  
30 property that is placed in service in this state.~~

31 (7) ~~"Qualified taxpayer" means a small business, as defined in  
32 Section 14837 of the Government Code, that has a gross income  
33 of less than ten million dollars (\$10,000,000) that is earned in  
34 California.~~

35 (8) ~~"Refining" means the process of converting a natural  
36 resource to an intermediate or finished product.~~

37 (9) ~~"Tangible personal property" does not include consumables  
38 with a normal useful life of less than one year, except as provided  
39 in subparagraph (E) of paragraph (10), and does not include  
40 furniture, inventory, equipment used in the extraction process, or~~

1 equipment used to store finished products that have completed the  
2 manufacturing process.

3 (10) ~~“Tangible personal property” includes, but is not limited~~  
4 ~~to, all of the following:~~

5 (A) ~~Machinery and equipment, including component parts and~~  
6 ~~contrivances such as belts, shafts, moving parts, and operating~~  
7 ~~structures.~~

8 (B) ~~All equipment or devices used or required to operate,~~  
9 ~~control, regulate, or maintain the machinery, including, without~~  
10 ~~limitation, computers, data processing equipment, and computer~~  
11 ~~software, together with all repair and replacement parts with a~~  
12 ~~useful life of one or more years therefor, whether purchased~~  
13 ~~separately or in conjunction with a complete machine and~~  
14 ~~regardless of whether the machine or component parts are~~  
15 ~~assembled by the taxpayer or another party.~~

16 (C) ~~Property used in pollution control that meets or exceed~~  
17 ~~standards established by the State Air Resources Board of the~~  
18 ~~Water Resources Control Board.~~

19 (D) ~~Special purpose buildings and foundations used as an~~  
20 ~~integral part of the manufacturing, processing, refining, or~~  
21 ~~fabricating process, or that constitute a research or storage facility~~  
22 ~~used during the manufacturing process. Buildings used solely for~~  
23 ~~warehousing purposes after completion of the manufacturing~~  
24 ~~process are not included.~~

25 (E) ~~Fuels used or consumed in the manufacturing process.~~

26 (F) ~~Property used in recycling.~~

27 (e) ~~No credit, no further credit in any subsequent year, and no~~  
28 ~~credit carryover shall be allowed with respect to the qualified~~  
29 ~~cleantech property to any qualified taxpayer beginning in the year~~  
30 ~~in which that qualified cleantech property for which a credit was~~  
31 ~~allowed under this section is disposed of or removed from this~~  
32 ~~state within one year of the date of purchase.~~

33 (d) ~~In the case where the credit allowed by this section exceeds~~  
34 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~  
35 ~~the following year, and the succeeding eight years, until the credit~~  
36 ~~is exhausted.~~

37 (e) ~~This section shall remain in effect only until January 1, 2013,~~  
38 ~~and as of that date is repealed, unless a later enacted statute, which~~  
39 ~~is enacted before January 1, 2013, deletes or extends that date.~~

1 However, any unused credit may continue to be carried forward,  
2 as provided in subdivision (d), until the credit is exhausted.

3 ~~SEC. 7. Section 23614 is added to the Revenue and Taxation~~  
4 ~~Code, to read:~~

5 ~~23614. (a) For each taxable year beginning on or after January~~  
6 ~~1, 2008, and before January 1, 2013, there shall be allowed as a~~  
7 ~~credit against the “tax” as defined by Section 23036 to a taxpayer~~  
8 ~~an amount determined in accordance with Section 41 of the Internal~~  
9 ~~Revenue Code for qualified research conducted in this state.~~

10 ~~(b) For purposes of this section:~~

11 ~~(1) “Qualified research” means research that is dedicated to the~~  
12 ~~development of cleantech technologies, including those that use~~  
13 ~~technology to compete favorably on price and performance while~~  
14 ~~reducing pollution, waste, and use of natural resources and that~~  
15 ~~focuses on the environmental impact of human activities.~~  
16 ~~“Qualified research” includes, but is not limited to, research into~~  
17 ~~cleantech technology that uses wind, solar, biomass, and hydrogen~~  
18 ~~technologies that result in cleaner air and water, encourage the~~  
19 ~~reuse of materials, and result in reductions of greenhouse gas~~  
20 ~~emissions.~~

21 ~~(2) The reference to “Section 501(a)” in Section 41(b)(3)(C) of~~  
22 ~~the Internal Revenue Code, relating to contract research expenses,~~  
23 ~~is modified to read “this part or Part 10 (commencing with Section~~  
24 ~~17001).”~~

25 ~~(c) (1) The provisions of Section 41(e)(4) of the Internal~~  
26 ~~Revenue Code relating to the election to use an alternate~~  
27 ~~incremental credit apply, except that the reference to the~~  
28 ~~“Secretary” in Section 41(e)(4)(B) of the Internal Revenue Code~~  
29 ~~shall be modified to, instead, refer to the “Franchise Tax Board.”~~

30 ~~(2) Section 41(e)(6) of the Internal Revenue Code, relating to~~  
31 ~~gross receipts, is modified to take into account only those gross~~  
32 ~~receipts from the sale of property held primarily for sale to~~  
33 ~~customers in the ordinary course of the taxpayer’s trade or business~~  
34 ~~that is delivered or shipped to a purchaser within this state,~~  
35 ~~regardless of freight on board (f.o.b.) point or any other condition~~  
36 ~~of the sale.~~

37 ~~(d) Section 41(h) of the Internal Revenue Code, relating to~~  
38 ~~termination, shall not apply.~~

1 ~~(e) Section 41(g) of the Internal Revenue Code, relating to~~  
2 ~~special rule for passthrough of credit, is modified by each of the~~  
3 ~~following:~~

4 ~~(1) The last sentence shall not apply.~~

5 ~~(2) If the amount determined under Section 41(a) of the Internal~~  
6 ~~Revenue Code for any taxable year exceeds the limitation of~~  
7 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~  
8 ~~carried over to other taxable years under the rules of subdivision~~  
9 ~~(g), except that the limitation of Section 41(g) of the Internal~~  
10 ~~Revenue Code shall be taken into account in each subsequent~~  
11 ~~taxable year.~~

12 ~~(f) Any deduction otherwise allowed under this part for any~~  
13 ~~amount paid or incurred by the taxpayer upon which the credit is~~  
14 ~~based shall be reduced by the amount of the credit allowed by this~~  
15 ~~section.~~

16 ~~(g) In the case where the credit allowed by this section exceeds~~  
17 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~  
18 ~~the following year, and the succeeding eight years if necessary,~~  
19 ~~until the credit has been exhausted.~~

20 ~~(h) This section shall remain in effect only until January 1, 2013,~~  
21 ~~and as of that date, is repealed. However, any unused credit may~~  
22 ~~be carried over and used after that repeal date in accordance with~~  
23 ~~subdivision (g).~~

24 ~~SEC. 8. Section 23615 is added to the Revenue and Taxation~~  
25 ~~Code, to read:~~

26 ~~23615. (a) Notwithstanding any provision of law to the~~  
27 ~~contrary, and except as otherwise provided in this section, up to~~  
28 ~~50 percent of any unused qualified tax credit allowed to a qualified~~  
29 ~~buyer may be sold or traded to, and used by, a qualified buyer.~~

30 ~~(b) For purposes of this section:~~

31 ~~(1) “Qualified buyer” means any company that employs workers~~  
32 ~~in this state.~~

33 ~~(2) “Qualified seller” means a taxpayer that was allowed tax~~  
34 ~~credits under Section 23613 or 23614.~~

35 ~~(3) “Qualified tax credit” means a tax credit allowed to a~~  
36 ~~taxpayer under Section 23613 or 23614.~~

37 ~~(e) Unused tax credits may be sold or traded by a qualified seller~~  
38 ~~during any taxable year beginning on or after January 1, 2008, but~~  
39 ~~may be used by a qualified buyer only for taxable years beginning~~  
40 ~~on or after January 1, 2009.~~

1 ~~(d) A qualified seller and qualified buyer shall apply to the~~  
2 ~~Franchise Tax Board, in the form and manner determined by the~~  
3 ~~board, for the purchase and sale of, or the trade of, any unused~~  
4 ~~qualified tax credit under this section.~~

5 *SEC. 3. Section 17052.14 is added to the Revenue and Taxation*  
6 *Code, to read:*

7 *17052.14. (a) For each taxable year beginning on or after*  
8 *January 1, 2008, and before January 1, 2013, there shall be*  
9 *allowed to a qualified taxpayer that makes an irrevocable election*  
10 *pursuant to subdivision (g), as a credit against the “net tax,” as*  
11 *defined by Section 17039, an amount equal to the qualified amount*  
12 *for qualified research conducted in this state.*

13 *(b) For purposes of this section:*

14 *(1) “Budget” means an estimate of all expenses expected to be*  
15 *paid or incurred during the taxable year by the qualified taxpayer*  
16 *for all qualified research purposes.*

17 *(2) “Cleantech” means technologies including, but not limited*  
18 *to, wind, solar, biomass, and hydrogen technologies, the*  
19 *implementation of which result in cleaner air and water, encourage*  
20 *the reuse of materials, and result in reductions of emissions of*  
21 *greenhouse gases, as that term is defined in subdivision (g) of*  
22 *Section 38505 of the Health and Safety Code.*

23 *(3) (A) “Qualified amount” means an amount determined in*  
24 *accordance with Section 41 of the Internal Revenue Code, as*  
25 *modified under paragraph (4) of subdivision (e), for qualified*  
26 *research conducted in this state.*

27 *(B) Paragraphs (2) and (3) of subdivision (a) of Section 41 of*  
28 *the Internal Revenue Code shall not apply in computing the*  
29 *qualified amount.*

30 *(C) For purposes of this section, the reference in Section 41*  
31 *(a)(1) of the Internal Revenue Code is modified to read “20*  
32 *percent.”*

33 *(4) “Qualified buyer” means any business with 500 or more*  
34 *employees in this state.*

35 *(5) “Qualified research” means:*

36 *(A) Research certified by the California Council on Science and*  
37 *Technology as cleantech research, except that “qualified research”*  
38 *includes only expenses for in-house research described in Section*  
39 *41(b)(2) of the Internal Revenue Code performed by employees of*

1 the qualified taxpayer and does not include contract research  
2 expenses.

3 (B) In order to qualify as “qualified research,” the following  
4 conditions shall also be satisfied:

5 (i) The qualified taxpayer shall have a minimum budget of three  
6 hundred thousand dollars (\$300,000) for qualified research.

7 (ii) The actual expenses for qualified research conducted during  
8 the qualified taxpayer’s taxable year must meet or satisfy the  
9 minimum budget amount required by clause (i) at the time of  
10 application to the California Council on Science and Technology.

11 (6) (A) “Qualified taxpayer” means an applicant who has been  
12 allocated tax credits by the California Council on Science and  
13 Technology pursuant to subdivision (e).

14 (B) A qualified taxpayer must be a business that has its principal  
15 office located in California, the officers of which are domiciled in  
16 California, and that, together with affiliates, has 100 or fewer  
17 employees, and average annual gross receipts of ten million dollars  
18 (\$10,000,000) or less over the previous taxable three years.

19 (C) (i) In the case of any passthrough entity, the determination  
20 of whether a taxpayer is a qualified taxpayer under this section  
21 shall be made at the entity level and any credit under this section  
22 is not allowed to the passthrough entity, but shall be passed  
23 through to the partners or shareholders in accordance with  
24 applicable provisions of Part 10 (commencing with Section 17001)  
25 or Part 11 (commencing with Section 23001). For purposes of this  
26 paragraph, “passthrough entity” means any entity taxed as a  
27 partnership or “S” corporation.

28 (ii) In the case of an “S” corporation, the credit allowed under  
29 this section shall not be used by an “S” corporation as a credit  
30 against a tax imposed under Chapter 4.5 (commencing with Section  
31 23800) of Part 11 of Division 2.

32 (7) “Unused credit” means an amount of tax credit originally  
33 allowed to a qualified taxpayer by this section that the qualified  
34 taxpayer has not claimed against the “net tax,” as defined by  
35 Section 17039, in any taxable year.

36 (c) Section 41 of the Internal Revenue Code is modified as  
37 follows:

38 (1) The provisions of Section 41(c)(4) of the Internal Revenue  
39 Code, relating to the election to use an alternate incremental credit,  
40 shall not apply.

1 (2) Section 41(c)(7) of the Internal Revenue Code, relating to  
2 gross receipts, is modified to take into account only those gross  
3 receipts from the sale of property held primarily for sale to  
4 customers in the ordinary course of the taxpayer's trade or  
5 business that is delivered or shipped to a purchaser within this  
6 state, regardless of freight on board point or any other condition  
7 of the sale.

8 (3) Section 41(h) of the Internal Revenue Code, relating to  
9 termination, shall not apply.

10 (4) Section 41(g) of the Internal Revenue Code, relating to  
11 special rule for passthrough of credit, is modified by each of the  
12 following:

13 (A) The last sentence shall not apply.

14 (B) If the amount determined under Section 41(a) of the Internal  
15 Revenue Code for any taxable year exceeds the limitation of Section  
16 41(g) of the Internal Revenue Code, that amount may be carried  
17 over to other taxable years under the rules of subdivision (g) except  
18 that the limitation of Section 41(g) of the Internal Revenue Code  
19 shall be taken into account in each subsequent taxable year.

20 (d) In order to be eligible for the credit authorized by this  
21 section, the qualified taxpayer shall do all of the following:

22 (1) File an application for the tax credit with the California  
23 Council on Science and Technology, in the form and manner as  
24 prescribed by the California Council on Science and Technology.

25 (2) Provide the California Council on Science and Technology  
26 with substantiation, by adequate books and records, or by sufficient  
27 corroborating evidence, that the qualified research expenses on  
28 which the credit was calculated were actually paid or incurred in  
29 the amount claimed, and that the qualified research was performed  
30 in California.

31 (3) Provide a copy of the certification issued by the California  
32 Council on Science and Technology, as specified in subdivision (e),  
33 to the Franchise Tax Board. If the qualified taxpayer fails to  
34 provide the Franchise Tax Board with a copy of the certification,  
35 the credit shall be disallowed and assessed and collected pursuant  
36 to Section 19051.

37 (e) The California Council on Science and Technology shall do  
38 all of the following:

39 (1) Establish a procedure for qualified taxpayers to file with  
40 the California Council on Science and Technology a written

1 application, on a form jointly prescribed by the California Council  
2 on Science and Technology and the Franchise Tax Board, for  
3 allocation of tax credits. The application shall be filed under  
4 penalty of perjury and shall include, but not be limited to, the  
5 following information:

6 (A) The budget for qualified research for the taxable year of  
7 the qualified taxpayer.

8 (B) An application fee.

9 (C) Any other information deemed relevant by the California  
10 Council on Science and Technology.

11 (2) Determine and designate who is a qualified taxpayer meeting  
12 the requirements of this section.

13 (3) Process and approve, or reject all applications on a  
14 first-come-first-served basis, not to exceed the amount specified  
15 in paragraph (4).

16 (4) Allocate tax credits to qualified taxpayers, subject to the  
17 aggregate allocation limits in subdivision (f), and which shall not  
18 exceed the lesser of any of the following:

19 (A) The amount of the credit tentatively allocated to the qualified  
20 taxpayer by the California Council on Science and Technology  
21 based on the initial application.

22 (B) The amount of the credit calculated based on the actual  
23 costs of qualified research.

24 (C) One million dollars (\$1,000,000) per qualified taxpayer per  
25 qualified year.

26 (5) Issue a certificate to the qualified taxpayer setting forth the  
27 name of the qualified taxpayer and the total amount of the tax  
28 credit allocated to the qualified taxpayer.

29 (6) Provide for the cancellation of the allocated credits, if  
30 qualified research does not begin within 180 days after notification  
31 of the credit allocation by the California Council on Science and  
32 Technology in accordance with subdivision (f).

33 (7) No later than December 1, 2008, the California Council on  
34 Science and Technology shall promulgate rules and regulations  
35 necessary to establish procedures, processes, requirements, and  
36 rules identified in or required to implement this section. Rules and  
37 regulations may be adopted on an emergency basis if necessary  
38 to meet the December 1, 2008, deadline. The California Council  
39 on Science and Technology may amend these rules and regulations  
40 as necessary. The California Council on Science and Technology

1 *may adopt rules and regulations to more narrowly define the terms*  
2 *listed in subdivision (b) to limit their meaning, but may not expand*  
3 *the definition of any terms defined in subdivision (b).*

4 (8) *Provide a list, at least annually, to the Franchise Tax Board,*  
5 *in the form and manner agreed upon by the Franchise Tax Board,*  
6 *of the names, taxpayer identification numbers, including taxpayer*  
7 *identification numbers of each partner or shareholder, as*  
8 *applicable, and the total amount of the tax credit allocated to each*  
9 *qualified taxpayer.*

10 (f) *The aggregate amount of credits that may be allocated in*  
11 *any calendar year pursuant to this section and Section 23614 shall*  
12 *be an amount not to exceed the sum of all of the following:*

13 (1) *Twelve million five hundred thousand dollars (\$12,500,000)*  
14 *for each calendar quarter, and for each calendar quarter*  
15 *thereafter.*

16 (2) *The unused credit ceiling, if any, for the preceding calendar*  
17 *quarter.*

18 (3) *The amount of previously allocated credits cancelled or*  
19 *disallowed in the preceding calendar quarter by reason of*  
20 *paragraph (3) or paragraph (6) of subdivision (d).*

21 (g) (1) *The election authorized under subdivision (a) shall be*  
22 *made on or included with the timely-filed original return of the*  
23 *qualified taxpayer, and shall be irrevocable.*

24 (2) *No other credit or deduction may be allowed for the same*  
25 *expenses upon which the credit provided for in subdivision (a) is*  
26 *allowed.*

27 (h) *Notwithstanding any provisions of law to the contrary, and*  
28 *except as otherwise provided in this section, a qualified taxpayer*  
29 *may elect to sell unused credits to a qualified buyer to claim*  
30 *against its "net tax," as defined by Section 17039, in any taxable*  
31 *year.*

32 (1) *The tax value of all unused tax credits that may be sold by*  
33 *all qualified taxpayers under this section shall not exceed up to*  
34 *50 percent of any unused credits, as measured at the time of the*  
35 *sale.*

36 (2) *Unused credits may be sold by a qualified taxpayer during*  
37 *any taxable year beginning on or after January 1, 2008, but no*  
38 *unused credits may be used by a qualified buyer in any taxable*  
39 *year beginning before January 1, 2009.*

1 (3) Both the qualified taxpayer and qualified buyer of unused  
2 credits shall report to the Franchise Tax Board, in the form and  
3 manner specified by the Franchise Tax Board, all required  
4 information regarding the purchase and sale of unused credits  
5 under this section.

6 (4) Unused credits may not be claimed by a qualified buyer  
7 against its “net tax,” as defined by Section 17039, in any taxable  
8 year unless the requirement in paragraph (3) has been satisfied.

9 (5) The Franchise Tax Board shall establish all necessary  
10 procedures and rules for qualified taxpayers to sell tax credits  
11 pursuant to this subdivision.

12 (6) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
13 Division 3 of Title 2 of the Government Code does not apply to  
14 any standard, criterion, procedure, determination, rule, notice, or  
15 guideline established or issued by the Franchise Tax Board  
16 pursuant to this subdivision.

17 (i) Any deduction otherwise allowed under this part for any  
18 amount paid or incurred by the taxpayer upon which the credit is  
19 based shall be reduced by the amount of the credit allowed by this  
20 section.

21 (j) In the case where the credit allowed under this section  
22 exceeds the “net tax,” the excess may be carried over to reduce  
23 the “net tax” in the following year, and the succeeding eight years  
24 if necessary, until the credit has been exhausted.

25 (k) This section shall remain in effect only until December 1,  
26 2013, and as of that date is repealed. However, any unused credit  
27 may be carried over and used after that repeal date in accordance  
28 with subdivision (j).

29 SEC. 4. Section 23614 is added to the Revenue and Taxation  
30 Code, to read:

31 23614. (a) For each taxable year beginning on or after  
32 January 1, 2008, and before January 1, 2013, there shall be  
33 allowed to a qualified taxpayer that makes an irrevocable election  
34 pursuant to subdivision (g), as a credit against the “tax,” as  
35 defined by Section 23036, an amount equal to the qualified amount  
36 for qualified research conducted in this state.

37 (b) For purposes of this section:

38 (1) “Budget” means an estimate of all expenses expected to be  
39 paid or incurred during the taxable year by the qualified taxpayer  
40 for all qualified research purposes.

1 (2) “*Cleantech*” means technologies including, but not limited  
2 to, wind, solar, biomass, and hydrogen technologies, the  
3 implementation of which result in cleaner air and water, encourage  
4 the reuse of materials, and result in reductions of emissions of  
5 greenhouse gases, as that term is defined in subdivision (g) of  
6 Section 38505 of the Health and Safety Code.

7 (3) (A) “*Qualified amount*” means an amount determined in  
8 accordance with Section 41 of the Internal Revenue Code, as  
9 modified under paragraph (4) of subdivision (e), for qualified  
10 research conducted in this state.

11 (B) Paragraphs (2) and (3) of subdivision (a) of Section 41 of  
12 the Internal Revenue Code shall not apply in computing the  
13 qualified amount.

14 (C) For purposes of this section, the reference in Section 41  
15 (a)(1) of the Internal Revenue Code is modified to read “20  
16 percent.”

17 (4) “*Qualified buyer*” means any business with 500 or more  
18 employees in this state.

19 (5) “*Qualified research*” means:

20 (A) Research certified by the California Council on Science and  
21 Technology as cleantech research, except that “*qualified research*”  
22 includes only expenses for in-house research described in Section  
23 41(b)(2) of the Internal Revenue Code performed by employees of  
24 the qualified taxpayer and does not include contract research  
25 expenses.

26 (B) In order to qualify as “*qualified research*,” the following  
27 conditions shall also be satisfied:

28 (i) The qualified taxpayer shall have a minimum budget of three  
29 hundred thousand dollars (\$300,000) for qualified research.

30 (ii) The actual expenses for qualified research conducted during  
31 the qualified taxpayer’s taxable year must meet or satisfy the  
32 minimum budget amount required by clause (i) at the time of  
33 application to the California Council on Science and Technology.

34 (6) (A) “*Qualified taxpayer*” means an applicant who has been  
35 allocated tax credits by the California Council on Science and  
36 Technology pursuant to subdivision (e).

37 (B) A qualified taxpayer must be a business that has its principal  
38 office located in California, the officers of which are domiciled in  
39 California, and that, together with affiliates, has 100 or fewer

1 employees, and average annual gross receipts of ten million dollars  
2 (\$10,000,000) or less over the previous taxable three years.

3 (C) (i) In the case of any passthrough entity, the determination  
4 of whether a taxpayer is a qualified taxpayer under this section  
5 shall be made at the entity level and any credit under this section  
6 is not allowed to the passthrough entity, but shall be passed  
7 through to the partners or shareholders in accordance with  
8 applicable provisions of Part 10 (commencing with Section 17001)  
9 or Part 11 (commencing with Section 23001). For purposes of this  
10 paragraph, "passthrough entity" means any entity taxed as a  
11 partnership or "S" corporation.

12 (ii) In the case of an "S" corporation, the credit allowed under  
13 this section shall not be used by an "S" corporation as a credit  
14 against a tax imposed under Chapter 4.5 (commencing with Section  
15 23800) of Part 11 of Division 2.

16 (7) "Unused credit" means an amount of tax credit originally  
17 allowed to a qualified taxpayer by this section that the qualified  
18 taxpayer has not claimed against the "tax," as defined by Section  
19 23036, in any taxable year.

20 (c) Section 41 of the Internal Revenue Code is modified as  
21 follows:

22 (1) The provisions of Section 41(c)(4) of the Internal Revenue  
23 Code, relating to the election to use an alternate incremental credit,  
24 shall not apply.

25 (2) Section 41(c)(7) of the Internal Revenue Code, relating to  
26 gross receipts, is modified to take into account only those gross  
27 receipts from the sale of property held primarily for sale to  
28 customers in the ordinary course of the taxpayer's trade or  
29 business that is delivered or shipped to a purchaser within this  
30 state, regardless of freight on board point or any other condition  
31 of the sale.

32 (3) Section 41(h) of the Internal Revenue Code, relating to  
33 termination, shall not apply.

34 (4) Section 41(g) of the Internal Revenue Code, relating to  
35 special rule for passthrough of credit, is modified by each of the  
36 following:

37 (A) The last sentence shall not apply.

38 (B) If the amount determined under Section 41(a) of the Internal  
39 Revenue Code for any taxable year exceeds the limitation of Section  
40 41(g) of the Internal Revenue Code, that amount may be carried

1 *over to other taxable years under the rules of subdivision (g) except*  
2 *that the limitation of Section 41(g) of the Internal Revenue Code*  
3 *shall be taken into account in each subsequent taxable year.*

4 *(d) In order to be eligible for the credit authorized by this*  
5 *section, the qualified taxpayer shall do all of the following:*

6 *(1) File an application for the tax credit with the California*  
7 *Council on Science and Technology, in the form and manner as*  
8 *prescribed by the California Council on Science and Technology.*

9 *(2) Provide the California Council on Science and Technology*  
10 *with substantiation, by adequate books and records, or by sufficient*  
11 *corroborating evidence, that the qualified research expenses on*  
12 *which the credit was calculated were actually paid or incurred in*  
13 *the amount claimed, and that the qualified research was performed*  
14 *in California.*

15 *(3) Provide a copy of the certification issued by the California*  
16 *Council on Science and Technology, as specified in subdivision (e),*  
17 *to the Franchise Tax Board. If the qualified taxpayer fails to*  
18 *provide the Franchise Tax Board with a copy of the certification,*  
19 *the credit shall be disallowed and assessed and collected pursuant*  
20 *to Section 19051.*

21 *(e) The California Council on Science and Technology shall do*  
22 *all of the following:*

23 *(1) Establish a procedure for qualified taxpayers to file with*  
24 *the California Council on Science and Technology a written*  
25 *application, on a form jointly prescribed by the California Council*  
26 *on Science and Technology and the Franchise Tax Board, for*  
27 *allocation of tax credits. The application shall be filed under*  
28 *penalty of perjury and shall include, but not be limited to, the*  
29 *following information:*

30 *(A) The budget for qualified research for the taxable year of*  
31 *the qualified taxpayer.*

32 *(B) An application fee.*

33 *(C) Any other information deemed relevant by the California*  
34 *Council on Science and Technology.*

35 *(2) Determine and designate who is a qualified taxpayer meeting*  
36 *the requirements of this section.*

37 *(3) Process and approve, or reject all applications on a*  
38 *first-come-first-served basis, not to exceed the amount specified*  
39 *in paragraph (4).*

1 (4) Allocate tax credits to qualified taxpayers, subject to the  
2 aggregate allocation limits in subdivision (f), and which shall not  
3 exceed the lesser of any of the following:

4 (A) The amount of the credit tentatively allocated to the qualified  
5 taxpayer by the California Council on Science and Technology  
6 based on the initial application.

7 (B) The amount of the credit calculated based on the actual  
8 costs of qualified research.

9 (C) One million dollars (\$1,000,000) per qualified taxpayer per  
10 qualified year.

11 (5) Issue a certificate to the qualified taxpayer setting forth the  
12 name of the qualified taxpayer and the total amount of the tax  
13 credit allocated to the qualified taxpayer.

14 (6) Provide for the cancellation of the allocated credits, if  
15 qualified research does not begin within 180 days after notification  
16 of the credit allocation by the California Council on Science and  
17 Technology in accordance with subdivision (f).

18 (7) No later than December 1, 2008, the California Council on  
19 Science and Technology shall promulgate rules and regulations  
20 necessary to establish procedures, processes, requirements, and  
21 rules identified in or required to implement this section. Rules and  
22 regulations may be adopted on an emergency basis if necessary  
23 to meet the December 1, 2008, deadline. The California Council  
24 on Science and Technology may amend these rules and regulations  
25 as necessary. The California Council on Science and Technology  
26 may adopt rules and regulations to more narrowly define the terms  
27 listed in subdivision (b) to limit their meaning, but may not expand  
28 the definition of any terms defined in subdivision (b).

29 (8) Provide a list, at least annually, to the Franchise Tax Board,  
30 in the form and manner agreed upon by the Franchise Tax Board,  
31 of the names, taxpayer identification numbers, including taxpayer  
32 identification numbers of each partner or shareholder, as  
33 applicable, and the total amount of the tax credit allocated to each  
34 qualified taxpayer.

35 (f) The aggregate amount of credits that may be allocated in  
36 any calendar year pursuant to this section and Section 17052.14  
37 shall be an amount not to exceed the sum of all of the following:

38 (1) Twelve million five hundred thousand dollars (\$12,500,000)  
39 for each calendar quarter, and for each calendar quarter  
40 thereafter.

1     (2) *The unused credit ceiling, if any, for the preceding calendar*  
2 *quarter.*

3     (3) *The amount of previously allocated credits cancelled or*  
4 *disallowed in the preceding calendar quarter by reason of*  
5 *paragraph (3) or paragraph (6) of subdivision (d).*

6     (g) (1) *The election authorized under subdivision (a) shall be*  
7 *made on or included with the timely-filed original return of the*  
8 *qualified taxpayer, and shall be irrevocable.*

9     (2) *No other credit or deduction may be allowed for the same*  
10 *expenses upon which the credit provided for in subdivision (a) is*  
11 *allowed.*

12     (h) *Notwithstanding any provisions of law to the contrary, and*  
13 *except as otherwise provided in this section, a qualified taxpayer*  
14 *may elect to sell unused credits to a qualified buyer to claim*  
15 *against its “tax,” as defined by Section 23036, in any taxable year.*

16     (1) *The tax value of all unused tax credits that may be sold by*  
17 *all qualified taxpayers under this section shall not exceed up to*  
18 *50 percent of any unused credits, as measured at the time of the*  
19 *sale.*

20     (2) *Unused credits may be sold by a qualified taxpayer during*  
21 *any taxable year beginning on or after January 1, 2008, but no*  
22 *unused credits may be used by a qualified buyer in any taxable*  
23 *year beginning before January 1, 2009.*

24     (3) *Both the qualified taxpayer and qualified buyer of unused*  
25 *credits shall report to the Franchise Tax Board, in the form and*  
26 *manner specified by the Franchise Tax Board, all required*  
27 *information regarding the purchase and sale of unused credits*  
28 *under this section.*

29     (4) *Unused credits may not be claimed by a qualified buyer*  
30 *against its “tax,” as defined by Section 23036, in any taxable year*  
31 *unless the requirement in paragraph (3) has been satisfied.*

32     (5) *The Franchise Tax Board shall establish all necessary*  
33 *procedures and rules for qualified taxpayers to sell tax credits*  
34 *pursuant to this subdivision.*

35     (6) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*  
36 *Division 3 of Title 2 of the Government Code does not apply to*  
37 *any standard, criterion, procedure, determination, rule, notice, or*  
38 *guideline established or issued by the Franchise Tax Board*  
39 *pursuant to this subdivision.*

1 (i) Any deduction otherwise allowed under this part for any  
2 amount paid or incurred by the taxpayer upon which the credit is  
3 based shall be reduced by the amount of the credit allowed by this  
4 section.

5 (j) In the case where the credit allowed under this section  
6 exceeds the “tax,” the excess may be carried over to reduce the  
7 “tax” in the following year, and the succeeding eight years if  
8 necessary, until the credit has been exhausted.

9 (k) This section shall remain in effect only until December 1,  
10 2013, and as of that date is repealed. However, any unused credit  
11 may be carried over and used after that repeal date in accordance  
12 with subdivision (j).

13 SEC. 5. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.

22 ~~SEC. 9.~~

23 SEC. 6. This act provides for a tax levy within the meaning of  
24 Article IV of the Constitution and shall go into immediate effect.